



MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230

410-537-3000 • 1-800-633-6101

Martin O'Malley
Governor

Anthony G. Brown
Lieutenant Governor

Shari T. Wilson
Secretary

Robert M. Summers, Ph.D.
Deputy Secretary

March 2, 2010

The Honorable Joan Carter-Conway
Miller Senate Office Building, 2 West Wing
11 Bladen Street
Annapolis, MD 21401 – 1991

RE: SB 664 – Environment- Dental Radiation Machines- Inspections

Dear Chairwoman Conway:

SB 664 – Environment- Dental Radiation Machines- Inspections – is a result of a change in MDE's practice in 2008 in addressing violations at regulated facilities across all programs.

By way of background, MDE and representatives of the MSDA have been working collaboratively over the past several months through a workgroup convened by MSDA President, Dr. Marc Nuger, and the MDE Secretary to resolve issues related to MDE's change in process, a low compliance rate and perceived discrepancies in the standards used by MDE inspectors and service providers who maintain dental x-ray machines.

The workgroup began meeting in January and has had three very productive meetings to discuss these issues. The workgroup is currently working on drafting a Final Report. The Department has been very encouraged by the sincere and enthusiastic commitment of the dental community to assist in ways of providing outreach to increase compliance and working on other issues.

Due to a low compliance rate of 38% at pre-announced inspections at dental facilities, MDE reviewed the enforcement process in place. For many years, it had been MDE's practice, upon discovery of a violation at an inspection at a dental facility, for MDE inspectors to note the violation and provide time for the facility to correct the violation. If the violation had been corrected in a reasonable timeframe, MDE did not assess a penalty.

Over time, this created a situation where the dental facilities were using the MDE inspection as a compliance check. This led to the low compliance rate in 2007 and allowed violations to exist longer than if the facility periodically self-checked its performance against regulatory requirements. Typical compliance rates for MDE programs range from 70 to 90%. To increase the compliance rate, MDE began to assess penalties upon initial discovery of a violation. As a result, the number of enforcement actions -- with an average penalty of under \$500 -- increased significantly. The compliance rate has also concurrently increased to 44% for the period July 1, 2009 through January 31, 2010.



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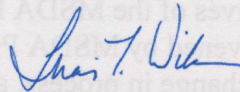
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The workgroup, mentioned above, has been working through these issues. Working together, the MSDA has provided several opportunities for MDE to provide information related to inspections directly to members. MDE has increased its information provided to the dental community such as posting on-line "How to Ensure Success in a Dental Inspection," the technical standards used by MDE inspectors and the Inspector's check list for an inspection. MDE has also guaranteed facilities 30-day advance notice of inspections. This collaboration has been very productive.

If the Legislature, though, does move forward with this Bill, there is a drafting matter that must be corrected. MDE believes the intent of the Bill is to reinstate the practice of a grace period as MDE had been implementing it. The Bill forbids MDE from taking an immediate enforcement action unless the violation causes "a serious and immediate danger." The nature of radiation exceedances is such that immediate harm is rarely the result. Rather, the impacts of radiation are long term and manifest well after the exposure. To be protective of public health if the Committee acts favorably on SB 664, we respectfully request that "does not present a serious and immediate danger" be changed to "is not significant as determined by the Department."

If you have any questions regarding this issue, please do not hesitate to contact me or MDE's Director of Legislation & Policy, Heather Barthel, at 410-260-6301 or hbarthel@mde.state.md.us.

Sincerely,



Shari T. Wilson

cc: The Honorable Katherine Klausmeier
Heather Barthel, MDE Director of Legislation and Policy
Tad Aburn, MDE Director of Air and Radiation Management
Lisa Nissley, MDE Legislative Liaison

